

Purchasing Processes

ELECTRIC UTILITY COMMISSION MEETING

DECEMBER 14, 2015

Outline

We will provide the Commission members with information about:

- The City Charter
- Other Applicable Laws, Ordinances and Policies
- Competitive and Non-Competitive Procurement Processes
- Special Considerations

The City Charter

Article VII – Finance, Section 15 – Purchase Procedure:

- All purchases made and contracts executed by the city shall be pursuant to a written requisition from the head of the office, department or agency whose appropriation will be charged, and no contract or order shall be binding upon the city unless and until the director of finance certifies that there is to the credit of such office, department or agency a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued.
- Before the city makes any purchase or contract for supplies, materials, equipment or contractual services, opportunity shall be given for competition unless exempted by state statute.
- The city manager shall have the authority to contract for expenditures without further approval of the council for an expenditure that does not exceed forty-three thousand dollars annually. (FY16: \$58,000)
- A contract or an amendment to a contract, involving an expenditure of more than forty-three thousand dollars annually (FY16: \$58,000) must be expressly approved by the council.
- All contracts or purchases involving more than five thousand dollars (\$5,000.00) shall be let to the bid deemed most advantageous to the city after there has been an opportunity for competitive bidding; provided, however, that the council shall have the right to reject any and all bids.
- Contracts for personal or professional services shall not be let on competitive bids and each such contract, or amendment to a contract, involving more than forty-three thousand dollars annually (FY16: \$58,000) shall be approved by the council.
- The city manager may not contract for personal or professional services under the manager's authority if the manager knows or reasonably should know that the contractor's full scope of work will exceed the limit of the manager's authority.
- The amount of the forty-three thousand dollar annual limitation shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government, Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-W U.S. City Average) U.S. City Average. The most recently published Consumer Price Index on May 4, 2002, shall be used as a base of 100 and the adjustment thereafter will be to the nearest one thousand dollars (\$1,000.00) (Authority for FY16 amount to be \$58,000)

Applicable Laws, Ordinances and Policies

Beyond the Charter, several bodies of law apply.

Local Government Code Chapter 252 is the basic statute governing how cities like Austin conduct procurement activities.

There are a number of other statutes, in several other codes, that apply (not all inclusive):

- Local Government Code
 - Chapter 271 provides additional structure for both municipalities and counties
 - Chapter 791 provides for inter-local government cooperation, including contract sharing
- Government Code
 - Chapter 2251 deals with payments
 - Chapter 2252 deals with contracts with government entities
 - Chapter 2253 deals with public work performance and bonds
 - Chapter 2254 deals with professional and consulting services
 - Chapter 2269 deals with construction at all levels of Texas government
- Business and Commerce Code
 - Title 1 adopts the Uniform Commercial Code for the state of Texas

Competitive...or not

Generally, the City Charter requires that for any purchase above \$5,000, competition – that is taking offers from multiple sources – be conducted.

Sometimes, the goods and services that the City needs are not competitively available in the marketplace. State law provides for non-competitive procurements subject to controls.

We will first review the Competitive Procurement Process, and follow up with Available Non-Competitive Processes.

The Competitive Procurement Process

Requirements - Specification of goods or scope of services needed by the city.

Requisition – meets Charter requirement for actual budget to be available.

Solicitation – Communication with potential offerors regarding requirements and the method by which offers will be compared and awarded.

Response – Offeror submits detailed offer back to city.

Evaluation – comparison of offers, with ultimate goal of selecting a vendor who is:

- Responsive; and
- Responsible; and
- Lowest priced (bid) or most advantageous (proposal)

Award – the acknowledgement of the offer.

Performance – City's receipt of conforming goods and services, and payment for same. Includes monitoring the contract for deliverables.

Available Non-Competitive Procurement Processes

State law provides for a number of non-competitive processes, including:

- Public Health and Safety.
- Sole Sources.
- Personal, professional and planning services.
- Cultural Arts and Social Grants.
- Library rarities.
- Interlocal Agreement: actual contract with another government. Example: Jail operation by Travis County.
- Cooperative Agreement: purchase from a contract competitively acquired by another government, and which both governing bodies (as well as the contractor) agree can be used by Austin. Example: State of Texas Department of Information Resources contracts.

Procurement Dollar Levels

Under \$5,000, Departments are authorized to:

- Use procurement cards up to \$3,000
- Take bids for purchases from \$3,000.01 to \$5,000.00
- May not purchase construction or services.

Above \$5,000.00, Central Purchasing has responsibility for acquisitions.

Above \$50,000.00, State Law establishes “formal” (advertised) competitive procurement unless the City is using a non-competitive method, such as a sole-source or cooperative.

As stated in the Charter, the City Council must explicitly approve any expenditure of more than \$58,000.00 (FY16) during the year.

If unable to get Council approval in advance, such as expenditures during an emergency, a ratification may be used to gain Council’s approval of the expenditure.

Informal Competitive Procurement

Purchases between \$5,000 and \$50,000 are described as “informal” based on the definition of a “formal” solicitation established in Local Government Code 252.

A requisition, establishing budget availability, is required per Charter.

Informal solicitation responses, called “offers”, are not received in sealed envelopes, and may be received by:

- Phone
- Fax
- Email

The solicitation documents issued by the City describe when (date and time) and where (physical location) that offers will be received.

Award documents are normally put into the financial system by Central Purchasing after the solicitation documents and offers are reviewed.

Formal Competitive Procurement

Local Government Code Chapter 252 establishes “formal” – that is “formally advertised” purchases as being over \$50,000 in value.

A requisition, establishing budget availability, is required per Charter.

Formal solicitation responses, called “offers”, are received in sealed envelopes.

Solicitation documents issued by the City describe when (date and time) and where (physical location) that offers will be received.

Award documents are normally put into the financial system by Central Purchasing.

Special Considerations

Anti-Lobbying

Proposal Confidentiality

Collusion

Conflict of Interest

Anti-Lobbying

Established by the City's Anti-Lobbying Ordinance.

The Offeror provides an affidavit that:

- As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

The following slide was presented to Council recently during Executive Session.

Slide 1

Chapter 2-7, Article Six: Anti-Lobbying and Procurement

- The purpose of the ordinance is to provide a fair process to vendors doing business with the City
- During a no-contact period, a respondent shall make a representation only through the authorized contact person.
- The prohibition ... [applies] to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.
- A representation is a communication to a City official intended to or likely to provide information about the response or advance the interests of the respondent

Additional Anti-Lobbying Facts

Who is the Authorized Contact Person?

- Typically, a buyer for the Purchasing Office or Capital Contracting Office. This person is identified in the solicitation and on the No Contact List that is published weekly.

How do I find out what solicitations are covered by Anti-Lobbying?

- Each week, an updated list is furnished to City staff, and a copy is posted on the Internet in Austin Finance Online at this permalink:

<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/no-contact-solicitations.pdf>

Can I talk to a vendor currently performing on a contract with the City?

- Yes – to the extent that you are discussing performance on that contract. The City must be able to conduct every day business.
- No – to the extent that you are discussing anything else that is the subject of an active solicitation.

Proposal Confidentiality

Established by Local Government Code 252.049 and State of Texas Attorney General Decisions.

Confidentiality of an offer varies based on the way the City will evaluate the offer.

Bids: Awarded on the basis of the price offered by the lowest responsible and responsive bidder. Information about the price offered is a public record when the bids are received and opened. Trade secrets and confidential information is not open for public inspection.

Proposals: Awarded on the basis of the best value to the municipality. Only a list of offerors is a public record at the time responses are received. Contents of proposals are not a public record until a contract is awarded. Trade secrets and confidential information is not open for public inspection.

- If contents of the proposal are marked as proprietary and confidential, that content is referred to the Texas Attorney General for a determination of release to the public.
- Proposal contents may be made available to City staff, and to elected and appointed officials as part of their official duties, subject to execution of a Non-Disclosure Agreement.

Anti-Collusion

Established by City Solicitation Affidavit.

Offerors provide an affidavit that they have not, directly or indirectly:

- Colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
- Paid or agreed to pay any other person, firm, corporation, Offeror, or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

Offerors also acknowledges:

- Preparation of Solicitation and Contract Documents
- Participation in Decision Making Process
- Present Knowledge
- City Code provisions regarding Substantial Interest

Conflict of Interest

Established by Local Government Code Chapter 176.

Offerors provide an affidavit that:

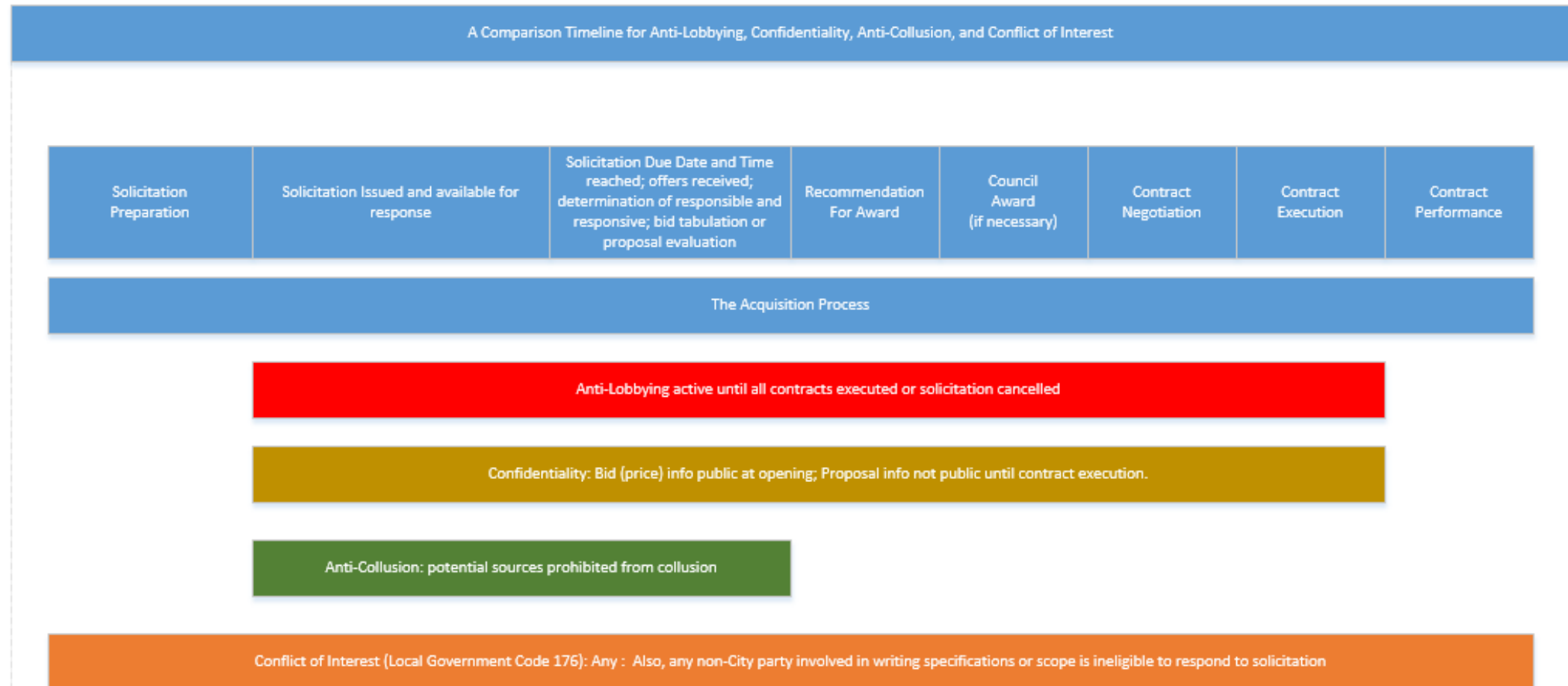
- The Offeror does not have employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
- The Offeror has not given not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- The Offeror, as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

Comparing Special Considerations



Questions
